

Senate Bill No. 2198

CHAPTER 997

An act to amend Sections 25281.5 and 40440.8 of, to add Sections 43830.8 and 116367.5 to, to add and repeal Section 116367 of, to repeal Section 25299.99 of, and to repeal, add, and repeal Article 13 (commencing with Section 25299.99) of Chapter 6.75 of Division 20 of, the Health and Safety Code, relating to pollution, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed
with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2198, Sher. Pollution: prevention and cleanup.

(1) Existing law, the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, creates the Underground Storage Tank Cleanup Fund, and makes the fund available, upon appropriation by the Legislature, to pay for specified administrative and cleanup costs relative to releases of hazardous materials from underground storage tanks. The act is repealed by its own terms on January 1, 2005. Existing law requires every owner of an underground storage tank containing petroleum to pay a storage fee of 12 mills per gallon and requires the State Board of Equalization to deposit those fee revenues in the fund. Existing law permits the State Water Resources Control Board to annually expend up to \$5,000,000 from the fund to take certain corrective actions to public drinking water contaminated by an oxygenate, and to expend no more than \$1,000,000 of that amount to pay a public water system for the cost of treatment of a water supply. For the purposes of the act, existing law excludes certain types of devices from the term "underground storage tank."

For purposes of the provisions governing underground storage tanks, this bill would exclude from the term "underground storage tank" unburied fuel piping at marinas under specified conditions, but would provide that this exclusion would not be applicable if the board adopts certain regulations.

This bill would repeal the provisions authorizing the expenditure of those funds for those corrective actions and would instead create, in the State Treasury, the Drinking Water Treatment and Research Fund. The bill would authorize the board to annually expend up to \$5,000,000 from the Underground Storage Tank Cleanup Fund, upon appropriation by the Legislature, until June 30, 1999, for specified purposes, and would require the board to annually transfer \$5,000,000, from June 30, 1999, until January 1, 2002, from the

Underground Storage Tank Cleanup Fund to the drinking water fund for expenditure for those purposes, if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank. The State Department of Health Services would be authorized to expend the money in the drinking water fund to make payments to public water systems for the costs of treating contaminated groundwater and surface water for drinking water purposes, investigating contamination, and acquiring alternate drinking water supplies, and would authorize the department to expend not more than \$1,000,000 for research into treatment technologies and to pay the department's administrative costs, as specified.

The bill would appropriate \$5,000,000 from the General Fund to the department for deposit in the drinking water fund, and would appropriate that amount therefrom, to carry out those purposes.

The bill would require the department to establish a Research Advisory Committee, with a specified membership, to review requests for research payments. The bill would allow the department to make payments for treatment, investigation, or alternative water supplies without requiring the public water system to first incur expenditures, if the department makes a specified determination. The bill would also specify that these payments for treatment, investigation, or alternative water supplies may be made without regard to when the contamination occurred and would require the department, when evaluating these claims submitted for payment, to consider the findings of a specified report.

(2) Existing law requires the State Air Resources Board to establish criteria for the evaluation of the effectiveness of, and permits the state board to conduct tests respecting the composition or the chemical or physical properties of, any motor vehicle fuel additive sold, or proposed to be sold, in this state.

This bill would prohibit the state board from adopting any regulation that requires the addition of any oxygenate to motor vehicle fuel unless it complies with certain conditions.

(3) Existing law required the South Coast Air Quality Management District to enter into a contract on or before April 1, 1991, with an independent firm to perform a review and analysis of the methods by which the district assesses socioeconomic impacts of district rules and regulations.

This bill would repeal that obsolete provision.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 25281.5 of the Health and Safety Code is amended to read:



25281.5. (a) Notwithstanding subdivision (l) of Section 25281, for purposes of this chapter “pipe” means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to 49 Code of Federal Regulations, Part 195.

(2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles which are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (x) of Section 25281, “underground storage tank” does not include either of the following:

(1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph shall not be applicable if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

SEC. 2. Article 13 (commencing with Section 25299.99) of Chapter 6.75 of Division 20 of the Health and Safety Code, as added by Section 8 of Chapter 814 of the Statutes of 1997, is repealed.

SEC. 3. Article 13 (commencing with Section 25299.99) of Chapter 6.75 of Division 20 of the Health and Safety Code, as added by Section 2 of Chapter 815 of the Statutes of 1997, is repealed.

SEC. 4. Article 13 (commencing with Section 25299.99) is added to Chapter 6.75 of Division 20 of the Health and Safety Code, to read:

Article 13. Drinking Water Treatment and Research

25299.99. (a) The board may annually expend up to five million dollars (\$5,000,000), upon appropriation by the Legislature, from the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50 for the purposes for which the State Department of Health Services may expend the money in the Drinking Water

Treatment and Research Fund set forth in Section 116367 when a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that a release has occurred from an underground storage tank.

(b) This section shall become inoperative on June 30, 1999, and, notwithstanding Section 25299.81, as of January 1, 2000, is repealed, unless a later enacted statute that is enacted before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

25299.99.1. (a) The board shall annually transfer five million dollars (\$5,000,000) from the Underground Storage Tank Cleanup Fund, created pursuant to Section 25299.50, to the Drinking Water Treatment and Research Fund created by Section 116367, to be expended for the purposes set forth in Section 116367 if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(b) This section shall become operative June 30, 1999.

25299.99.2. This article, notwithstanding Section 25299.81, shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 5. Section 40440.8 of the Health and Safety Code is amended to read:

40440.8. (a) Whenever the south coast district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, the district, to the extent data are available from the district's regional economic model or other sources, shall perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.

(b) For the purposes of this section, "socioeconomic impact" means only the following:

(1) The type of industries affected by the rule or regulation.

(2) The impact of the rule or regulation on employment and the economy in the south coast basin attributable to the adoption of the rule or regulation.

(3) The range of probable costs, including costs to industry, of the rule or regulation.

(4) The availability and cost-effectiveness of alternatives to the rule or regulation, as determined pursuant to Section 40922.

(5) The emission reduction potential of the rule or regulation.

(6) The necessity of adopting, amending, or repealing the rule or regulation in order to attain state and federal ambient air standards pursuant to Chapter 10 (commencing with Section 40910).

SEC. 6. Section 43830.8 is added to the Health and Safety Code, to read:

43830.8. (a) The state board may not adopt any regulation that requires the addition of any oxygenate to motor vehicle fuel unless the regulation is subject to multimedia rulemaking.

(b) As used in subdivision (a), “multimedia rulemaking” means rulemaking that is the product of consultation and coordination with other members of the council as is necessary to protect public health and the environment from any significant adverse effects in air, water, or soil from the use of the oxygenate.

SEC. 7. Section 116367 is added to the Health and Safety Code, to read:

116367. (a) The Legislature finds and declares that oxygenated gasoline has contaminated groundwater and surface water used for drinking water purposes. The Legislature further declares that it is in the public interest to provide funding to pay for corrective actions needed to protect public health and the environment as a result of oxygenate contamination of drinking water.

(b) For the purposes of this section, the following terms have the following meanings:

(1) “Drinking water fund” means the Drinking Water Treatment and Research Fund created pursuant to subdivision (c).

(2) “Financial hardship” means a public water system does not have sufficient resources not otherwise dedicated for a specified purpose, including, but not limited to, debt service requirements, to pay for necessary treatment works, conduct an investigation into the source of contamination, or acquire alternate drinking water supplies and leave sufficient reserves available to enable the system owner or operator to address economic uncertainties to pay for contingencies.

(3) “Oxygenate” has the same meaning as oxygenate as defined in Section 25299.97.

(4) “Public water system” means a public water system, as defined in Section 116275.

(c) The Drinking Water Treatment and Research Fund is hereby created in the State Treasury.

(d) The department may expend the money in the drinking water fund for all of the following purposes:

(1) To make payments to a public water system for the incremental costs of treating groundwater and surface water used for drinking water purposes that has been contaminated by an oxygenate if the level of contamination exceeds the lowest of any primary or secondary drinking water standard adopted pursuant to Section 116365 or 116610. Treatment for surface water shall be for surface water that supplies water to a treatment facility for a water supply system that serves domestic uses.

(2) To make payments to a public water system for the costs of investigating the possible source of contamination when an oxygenate is detected at any level in groundwater supplies utilized by a public water system for drinking water purposes. Costs eligible

for payment under this paragraph may include the cost of acquiring alternate drinking water supplies if the well is required to be shut down or its use curtailed during the investigation. Costs eligible for payment under this paragraph shall not include any costs incurred by a public water system to pursue cost recovery from responsible persons pursuant to subdivision (f).

(3) To make payments to a public water system for the incremental costs of acquiring alternate drinking water supplies to replace supplies contaminated by an oxygenate at a level that exceeds the lowest of any primary or secondary drinking water standard adopted pursuant to Section 116365 or 116610. Costs eligible for payment under this paragraph include the costs of connecting a public water system to another public water system or constructing a new drinking water well.

(4) To conduct research and develop cost-effective treatment technologies to treat drinking water contaminated by an oxygenate to meet primary or secondary drinking water standards and effective strategies to protect drinking water sources from contamination by oxygenates. The department shall not expend more than one million dollars (\$1,000,000) annually for these purposes and may enter into cooperative agreements with federal and state agencies, local agencies, or other persons to conduct research and development activities.

(5) To pay the administrative costs, not to exceed 5 percent, for the department to administer this section.

(e) Notwithstanding Section 7550.5 of the Government Code, the department shall report annually to the Governor and to the Legislature on any money provided to a public water system pursuant to this section.

(f) The department shall be reimbursed by a public water system that has received funds pursuant to this section, to the extent that the public water system receives payment from any source to cover the costs for which it received funding under this section. The public water system shall aggressively pursue cost recovery from responsible persons and, upon recovery, or within five years of the initial payment received, whichever occurs first, shall reimburse the department for funds received pursuant to this section, unless the public water system can demonstrate that, despite all reasonable efforts, recovery from a responsible party is not possible, or that a responsible party cannot be identified. The department shall transfer any reimbursements received from a public water system into the drinking water fund or the Underground Storage Tank Cleanup Fund, whichever provided the funds.

(g) The department may make payments pursuant to paragraphs (1), (2), and (3) of subdivision (d) without regard to when the contamination occurred or when costs for treating or investigating the source of contamination or acquiring replacement water were

incurred, except that a public water system may not receive more than three million dollars (\$3,000,000) from the drinking water fund in any fiscal year unless the public water system makes a showing of financial hardship.

(h) (1) The department may make payments pursuant to paragraphs (1), (2), and (3) of subdivision (d), without requiring a public water system to first incur expenditures, if the department determines that a situation exists that requires prompt action by the public water system to protect human health or the environment, or the public water system makes a showing of financial hardship.

(2) Upon a showing of financial hardship, pursuant to paragraph (1), the public water system shall present the department with a work plan that specifies the estimated costs of treatment, constructing a new drinking water well, or obtaining an alternate water supply. The estimated costs of treatment or constructing a new well to provide replacement water shall be prepared by a registered civil engineer or other registered professional. The estimated costs for acquiring an alternate water supply, other than a new well, shall be substantiated by an identification of necessary capital facilities to convey the water to the public water system and a written offer by another entity to provide the alternate water supply.

(3) The department shall prescribe forms and procedures for claims filed pursuant to this section as necessary to ascertain eligibility for payment and validity of incremental costs based on generally accepted accounting principles. The department shall not require an applicant to prepare an economic feasibility study regarding the acquisition of an alternate water supply. The department may require a description of site-specific information, including the origin of contamination, the petroleum products released, and the status of cleanup and abatement activities at potential leaking underground storage tank sites if that information is available to the applicant.

(4) The department shall provide payment within 60 days of receiving a claim filed pursuant to this section.

(5) A claim shall be deemed true and correct if not audited by the department within three years of payment.

(i) The department, in evaluating claims submitted for payment from the drinking water fund, shall consider the findings of the University of California report regarding the assessment undertaken pursuant to Section 3 of Chapter 816 of the Statutes of 1997, as those findings relate to the assessment of the human health and environmental risks and benefits, if any, associated with the use of MTBE in gasoline. In particular, the department shall consider findings in the report regarding the evaluation of the costs and effectiveness of treatment technologies available to remove MTBE from drinking water.

(j) Any funds transferred to the drinking water fund pursuant to Section 25299.99 may be used for the purposes of this section only if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(k) (1) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

(2) The repeal of this section does not terminate any of the following rights, obligations or authorities, or any provision necessary to carry out these rights or obligations:

(A) The filing and payment of claims in the fund, until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(B) The resolution of any cost recovery action.

SEC. 8. Section 116367.5 is added to the Health and Safety Code, to read:

116367.5. The department shall establish a Research Advisory Committee, which shall consist of 11 members. The department shall provide for the support staff and meeting facility needs of the committee. The committee shall meet as necessary to review requests for research projects pursuant to paragraph (4) of subdivision (d) of Section 116367. The committee members shall be appointed by the director and shall consist of the following members:

(a) Four members representing public water systems.

(b) Four members representing entities paying into the Underground Storage Tank Cleanup Trust Fund created pursuant to Section 25299.50.

(c) One member representing environmental interest groups.

(d) One member representing consumer interest groups.

(e) One member representing the department.

SEC. 9. The sum of five million dollars (\$5,000,000) is hereby appropriated from the General Fund to the State Department of Health Services for deposit into the Drinking Water Treatment and Research Fund created pursuant to Section 116367 of the Health and Safety Code, and appropriated therefrom, to carry out the purposes set forth in that section.